

78 Am. Jur. 2d Waters § 139

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Waters

Janice Holben, J.D., Alan J. Jacobs, J.D., Jack K. Levin, J.D., and Eric C. Surette, J.D.

III. Particular Types of Waters or Water Bodies


C. Navigable Waters

1. In General

§ 139. What constitutes navigability—Capacity for and character of use

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Water Law](#)  2522, 2523

The question of navigability generally depends on whether the stream or body of water in its natural state is such that it affords a channel or highway for useful commerce and travel.¹ According to this test, if the stream or body of water is capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact and therefore becomes a public river or highway.² If a body of water has sufficient capacity to be legally navigable, this determines its status, regardless of whether it is being actually used as a highway.³ Thus, the determination also involves whether the body of water is susceptible or capable of bearing commercial navigation.⁴

The capacity of a body of water for recreational use is to be considered but, standing alone, is not necessarily determinative of navigability.⁵ Evidence of recreational use of a river, depending on its nature, may bear on the river's susceptibility to commercial use.⁶ Navigability may elsewhere be defined broadly to include any legitimate and beneficial use, whether commercial or recreational; under this view, commercial use of the waterway is not required for it to be navigable, and pleasure traffic is entitled to protection in using the waterway.⁷

Once a waterway has been deemed navigable, it remains so; it retains its navigable status, even though it is not presently used for navigation, or is presently incapable of use because of changed conditions or the presence of obstructions.⁸ Neither a lengthy absence of use caused by changed conditions nor the advent of modern means of transportation affects the navigability of rivers.⁹

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Footnotes

- 1 [U.S. v. State of Utah, 283 U.S. 64, 51 S. Ct. 438, 75 L. Ed. 844 \(1931\).](#)
A water's navigability depends on its public commercial usefulness. [Nichols v. Culottes Bay Navigation Rights Committee, LLC, 2011 Ark. App. 730, 387 S.W.3d 199 \(2011\).](#)
A watercourse is navigable when, by its depth, width, and location, it is rendered available for commerce. [Dunaway v. Louisiana Wildlife and Fisheries Com'n, 6 So. 3d 228 \(La. Ct. App. 1st Cir. 2009\).](#)
A creek and artificial lake created by a dam were not "navigable waterways" even though the creek flowed through lands belonging to more than one person and was occasionally used by fishing boats and canoes during some parts of year; proof of occasional use by boats and canoes did not show that the creek was capable of any beneficial public use. [Wehby v. Turpin, 710 So. 2d 1243 \(Ala. 1998\).](#)
- 2 [U.S. v. State of Utah, 283 U.S. 64, 51 S. Ct. 438, 75 L. Ed. 844 \(1931\); U.S. v. Holt State Bank, 270 U.S. 49, 46 S. Ct. 197, 70 L. Ed. 465 \(1926\).](#)
- 3 [Utah v. U.S., 403 U.S. 9, 91 S. Ct. 1775, 29 L. Ed. 2d 279 \(1971\); U.S. v. State of Utah, 283 U.S. 64, 51 S. Ct. 438, 75 L. Ed. 844 \(1931\); Economy Light & Power Co. v. U.S., 256 U.S. 113, 41 S. Ct. 409, 65 L. Ed. 847 \(1921\); Mullenix v. U.S., 984 F.2d 101 \(4th Cir. 1993\); Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630 \(11th Cir. 1995\); Ricko Const., Inc. v. Dubois, 57 So. 3d 564 \(La. Ct. App. 3d Cir. 2011\) \(lack of commercial traffic does not preclude a finding of navigability\); Gwathmey v. State Through Dept. of Environment, Health, and Natural Resources Through Cobey, 342 N.C. 287, 464 S.E.2d 674 \(1995\); State v. West Tennessee Land Co., 127 Tenn. 575, 158 S.W. 746 \(1913\).](#)
Evidence of a river's practical utility for transportation and thus its navigability in fact need not be limited to evidence of its capacity for the movement of commercial goods or commodities. [Adirondack League Club, Inc. v. Sierra Club, 92 N.Y.2d 591, 684 N.Y.S.2d 168, 706 N.E.2d 1192 \(1998\).](#)
- 4 [PPL Montana, LLC v. Montana, 132 S. Ct. 1215, 182 L. Ed. 2d 77 \(2012\); State ex rel. Winkleman v. Arizona Navigable Stream Adjudication Com'n, 224 Ariz. 230, 229 P.3d 242 \(Ct. App. Div. 1 2010\); Briggs v. Jupiter Hills Lighthouse Marina, 9 So. 3d 29 \(Fla. 4th DCA 2009\); Dunaway v. Louisiana Wildlife and Fisheries Com'n, 6 So. 3d 228 \(La. Ct. App. 1st Cir. 2009\); Brownlee v. South Carolina Dept. of Health and Environmental Control, 382 S.C. 129, 676 S.E.2d 116 \(2009\); Hix v. Robertson, 211 S.W.3d 423 \(Tex. App. Waco 2006\).](#)
- 5 [Portage Cty. Bd. of Commrs. v. Akron, 109 Ohio St. 3d 106, 2006-Ohio-954, 846 N.E.2d 478 \(2006\).](#)
Recreational use is part of the navigability analysis and can be considered in determining whether a river is navigable in fact. [Adirondack League Club, Inc. v. Sierra Club, 92 N.Y.2d 591, 684 N.Y.S.2d 168, 706 N.E.2d 1192 \(1998\).](#)
- 6 [PPL Montana, LLC v. Montana, 132 S. Ct. 1215, 182 L. Ed. 2d 77 \(2012\).](#)
- 7 [Brownlee v. South Carolina Dept. of Health and Environmental Control, 382 S.C. 129, 676 S.E.2d 116 \(2009\).](#)
- 8 [Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630 \(11th Cir. 1995\).](#)
- 9 [Muckleshoot Indian Tribe v. F.E.R.C., 993 F.2d 1428 \(9th Cir. 1993\).](#)

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